

<b>Notice of Allowability</b>	Application No.	Applicant(s)
	10/820,358	FLANNERY ET AL.
	Examiner Robert G. Santos	Art Unit 3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to the papers filed on 01 May 2006 and the telephonic interview held on 25 July 2006.
2.  The allowed claim(s) is/are 1-5, 7, 8, 12, 13, 15-18, 24, 25, 27 and 28, now renumbered as claims 1-17.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 20060501
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date 20060725.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

  
**ROBERT G. SANTOS**  
**PRIMARY EXAMINER**

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert J. Jacobson on July 25, 2006.

The application has been amended as follows:

- 1) On page 1, in line 4: The phrase --now U.S. Patent No. 6,952,846,-- has been inserted after "2003,".
  - 2) On page 1, in lines 6 and 9: The phrase --, now U.S. Patent No. 6,952,846,-- has been inserted after the number "2003".
2. The following is an examiner's statement of reasons for allowance: The examiner respectfully asserts that none of the prior art, taken either singly or in combination, is seen to teach or suggest the use of a bed rail comprising the particular structural configuration of a leg portion; a rail portion engaged to the leg portion and confronting the first side of a bed, the rail portion including a frame and *sheeting* engaged to the frame; the leg portion extending from the rail portion toward the second side of the bed, wherein the rail portion and the leg portion *can be relatively drawn to each other and away from each other*; the frame further comprising a rigid

component, an upper portion, a lower portion, and a pair of side portions, wherein the upper and lower portions extend to and between the side portions and the sheeting is engaged between the upper and lower portions and between the side portions, and wherein the rigid component of the frame comprises *tubing* running to and between the side portions of the frame and *disposed between the upper and lower portions of the frame* as explicitly recited in Applicants' independent claims 1, 7, 15, 27 and 28; wherein the rail portion can be disposed at a *fabricated predefined acute angle* relative to the leg portion as recited in Applicants' independent claim 12; and wherein the bed rail further comprises a second quick connect between the tubing and the side portion of the frame with the second quick connect *being connectable to different portions of the side portion along a height of the side portion such that the tubing is adjustable in height*, as specifically recited in Applicants' independent claim 25. With regards to the prior art, U.S. Pat. No. 6,990,697 to Clute is considered to show the use of a bed rail comprising a leg portion and a rail portion which can be relatively drawn to each other, wherein the rail portion further includes a frame, sheeting engaged to the frame, and a rigid component comprising tubing running to and between side portions of the frame and disposed between the upper and lower portions of the frame; however, Applicants' earliest priority date precedes the filing date of the Clute '697 reference, and the Clute '697 patent also does not disclose the use of a rail portion which can be disposed at a fabricated predefined acute angle relative to the leg portion or the use of a second quick connect which enables the tubing to be height-adjustable as claimed by Applicants. Furthermore, since an updated search of the prior art did not yield any other references pertinent to Applicants' claims, it is considered that the application is currently in full and proper condition for allowance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3673



Robert G. Santos

Primary Examiner

Art Unit 3673

R.S.

July 25, 2006